

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 7th day of March, two thousand eight.

PRESENT:

HON. WILFRED FEINBERG,
HON. ROBERT A. KATZMANN,
HON. DEBRA ANN LIVINGSTON,
Circuit Judges.

QIAO QIAO ZHENG,
Petitioner,

v.

MICHAEL B. MUKASEY,¹ UNITED STATES
ATTORNEY GENERAL,
Respondent.

07-3621-ag
NAC

¹ Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Attorney General Alberto R. Gonzales as the respondent in this case.

1 **FOR PETITIONER:** **Tina Howe, New York, New York.**

2
3 **FOR RESPONDENT:** **Jeffrey S. Bucholtz, Acting**
4 **Assistant Attorney General;**
5 **Christopher C. Fuller, Senior**
6 **Litigation Counsel; Edward J. Duffy,**
7 **Attorney, Office of Immigration**
8 **Litigation, U.S. Department of**
9 **Justice, Washington, D.C.**

10 UPON DUE CONSIDERATION of this petition for review of a
11 Board of Immigration Appeals ("BIA") decision, it is hereby
12 ORDERED, ADJUDGED, AND DECREED that the petition for review
13 is DENIED.

14 Qiao Qiao Zheng, a native and citizen of China, seeks
15 review of an August 2, 2007 order of the BIA affirming the
16 March 22, 2006 decision of Immigration Judge ("IJ") Alan
17 Page, which denied her applications for asylum, withholding
18 of removal, and relief under the Convention Against Torture
19 ("CAT"). *In re Zheng, Qiao Qiao*, No. A97 384 883 (B.I.A.
20 Aug. 2, 2007), *aff'g* No. A97 384 883 (Immig. Ct. N.Y. City
21 Mar. 22, 2006). We assume the parties' familiarity with the
22 underlying facts and procedural history.

23 Where, as here, the BIA adopts the decision of the IJ
24 and supplements the IJ's decision, this Court reviews the
25 decision of the IJ as supplemented by the BIA. See *Yan Chen*
26 *v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). We review the

1 agency's factual findings, including adverse credibility
2 determinations, under the substantial evidence standard,
3 treating them as "conclusive unless any reasonable
4 adjudicator would be compelled to conclude to the contrary."
5 8 U.S.C. § 1252(b)(4)(B); *Niang v. Mukasey*, 511 F.3d 138,
6 145 (2d Cir. 2007). However, we will vacate and remand for
7 new findings if the agency's reasoning or its fact-finding
8 process was sufficiently flawed. The Court reviews *de novo*
9 questions of law and the application of law to undisputed
10 fact. *Manzur v. Dep't of Homeland Sec.*, 494 F.3d 281, 288-89
11 (2d Cir. 2007).

12 We find that the IJ's adverse credibility determination
13 is supported by substantial evidence, as the record supports
14 the IJ's conclusion that Zheng's testimony was inconsistent
15 with her credible fear interview in several respects.² Zheng
16 testified that her mother began practicing Falun Gong in
17 1998, and that Zheng began practicing in 2002 after seeing
18 that Falun Gong improved her mother's health. At Zheng's

² Although Zheng failed to challenge the reliability of the credible fear interview in her brief to this Court, we note that where, as here, there is no indication that an applicant's testimony has been coerced, unfairly truncated, or mistranslated in any material way, "it is entirely appropriate that a factfinder consider such testimony when making a credibility assessment." *Yun-Zui Guan v. Gonzales*, 432 F.3d 391, 398 (2d Cir. 2005) (*per curiam*).

1 credible fear interview, however, Zheng indicated that both
2 she and her mother began practicing in 2002. The IJ did not
3 err in drawing an adverse inference from this discrepancy
4 and reasonably declined to accept Zheng's proffered
5 explanation - that she made a mistake at her credible fear
6 interview. *See Majidi v. Gonzales*, 430 F.3d 77, 80-81 (2d
7 Cir. 2005).

8 Likewise, Zheng testified that the authorities came to
9 her home on December 23, 2002, but stated at her credible
10 fear interview that this occurred in February 2003. Although
11 minor discrepancies may not always provide support for an
12 adverse credibility finding, *see Diallo v. INS*, 232 F.3d
13 279, 288 (2d Cir. 2000), we have held that where an
14 applicant alleges an "event of major importance," a fact-
15 finder "might reasonably expect him to have had a clear
16 recollection" of the date it occurred, *Zhou Yun Zhang v.*
17 *INS*, 386 F.3d 66, 77 (2d Cir. 2004), *overruled in part on*
18 *other grounds by Shi Liang Lin v. U.S. Dep't of Justice*, 494
19 F.3d 296, 305 (2d Cir. 2007) (*en banc*). Because Zheng based
20 her past persecution claim on the beating she allegedly
21 suffered during her attempted arrest, the IJ reasonably
22 based his adverse credibility determination in part on

1 Zheng's inability to recall the date of this event.

2 The IJ noted further discrepancies as well. For
3 example, while Zheng testified that she hid at her aunt's
4 house for five months after her mother's arrest, she
5 indicated at her credible fear interview that she hid "in
6 different locations." In addition, while Zheng testified at
7 her hearing that she physically struggled with the
8 authorities when they came to arrest her, at her credible
9 fear interview she made no mention of such a struggle, but
10 indicated instead that she "ran out through the back" when
11 the authorities arrived, that they searched the house for
12 her, and that she went into hiding. These inconsistencies,
13 when considered cumulatively, provided additional support
14 for the IJ's adverse credibility determination. See *Tu Lin*
15 *v. Gonzales*, 446 F.3d 395, 402 (2d Cir. 2006).

16 Taken as a whole, the adverse credibility finding was
17 supported by substantial evidence and was a proper basis for
18 the denial of Zheng's asylum claim. Moreover, because the
19 only evidence of a threat to Zheng's life or freedom
20 depended upon her credibility, the adverse credibility
21 determination also precluded success on Zheng's claims for
22 withholding of removal and CAT relief, which were based on

1 the same factual predicate as the asylum claim.³ See *Paul v.*
2 *Gonzales*, 444 F.3d 148, 156 (2d Cir. 2006). The agency
3 reasonably denied these claims as well.

4 For the foregoing reasons, the petition for review is
5 DENIED. As we have completed our review, the pending motion
6 for a stay of removal is DENIED as moot.

7 FOR THE COURT:

8 Catherine O'Hagan Wolfe, Clerk

9
10 By: _____

³ By failing to raise any challenge to the IJ's determination regarding her illegal departure claim either before the BIA or this Court, Zheng abandoned that claim. See *Yueqing Zhang v. Gonzales*, 426 F.3d 540, 545 n.7 (2d Cir. 2005).